August 3, 2001

Sent via e-mail, hand delivery and/or U.S. Mail

Mary L. Cottrell, Secretary
Massachusetts Department of Telecommunications and Energy
One South Station, Second Floor
Boston, MA 02110

re: DTE 01-31 Verizon's Alternative Regulation Plan

Dear Secretary Cottrell:

Enclosed for filing is the Attorney General's Response to Verizon New England d/b/a Verizon Massachusetts ("Verizon")'s July 25, 2001 appeal of the Hearing Officer's July 19, 2001 ruling regarding Verizon's June 13, 2001 Motion for Confidential Treatment, together with a Certificate of Service in the above-referenced proceeding.

Sincerely,

Karlen J. Reed
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KJR/kr
Enc.
cc: Paula Foley, Hearing Officer (w/enc)
DTE 01-31 Service list (w/enc)

THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Regulatory Plan to succeed Price Cap Regulation for Verizon New England, Inc. d/b/a Verizon Massachusetts' intrastate retail telecommunications services in the Commonwealth of Massachusetts	)	D.T.E. 01-31

ATTORNEY GENERAL'S RESPONSE
TO VERIZON MASSACHUSETTS' JULY 25, 2001 APPEAL OF THE HEARING OFFICER'S JULY 19, 2001 RULING ON VERIZON MASSACHUSETTS' JUNE 13, 2001 MOTION FOR CONFIDENTIAL TREATMENT REGARDING INFORMATION REQUEST DTE 2-9

I. Background

On May 24, 2001, the Massachusetts Department of Telecommunications and Energy ("DTE" or "Department") issued a series of information requests to Verizon New England d/b/a Verizon Massachusetts ("Verizon" or "the Company"). One of the information requests asked Verizon to "provide complete and detailed documentation in support of [Verizon President Robert Mudge's] statements about the resale market." DTE 2-9. On June 13, 2001, Verizon filed a motion for confidential treatment regarding its response to DTE 2-9 ("Verizon Motion"), contending that, while the exchange-specific information regarding the percentage of resold business lines to retail business lines and the names of the 54 resellers with installed lines in January 2001 was suitable for public disclosure, the two sets of numbers which established that percentage, *i.e.*, the number of resold business lines and the number of retail business lines broken down by exchange, "qualify as 'trade secret' or 'confidential, competitively sensitive, proprietary information' and should be protected from disclosure." Verizon Motion at 1.

On July 19, 2001, the Hearing Officer issued a ruling which denied this motion on the grounds that Verizon failed to meet the second part of the three-part standard contained in G.L. c. 25, § 5D, by failing to prove the need for non-disclosure ("Ruling"). The Hearing Officer determined that Verizon's assertions as to need amounted to no more than "conclusory statements" which do not "explain how competitors would or could use this information if made available to the public." Ruling at 3. According to the Hearing Officer, Verizon failed to meet its statutory burden because the Company failed to explain "how use of this information by competitors, if so used, would affect Verizon's or the resellers' competitive positions." *Id.*

On July 25, 2001, Verizon filed an appeal ("Verizon Appeal") of the Hearing Officer's Ruling to the full Commission, contending that the Hearing Officer abused her discretion by denying Verizon's Motion. On July 26, 2001, the Hearing Officer requested that all comments on the Verizon Appeal be filed by August 6, 2001, and reply comments filed by August 10, 2001.

II. Standard of Review

The Department has established a well-defined standard of review for determining whether information submitted to the Department should be hidden from public view. General Laws c. 25, § 5D, establishes a three-part standard for determining whether, and to what extent, information filed by a party in the course of a Department proceeding may be protected from public disclosure. First, the information for which protection is sought must constitute "trade secrets, confidential, competitively sensitive or other proprietary information." Second, the party seeking protection must overcome the statutory presumption that all such information is public information by "proving" the need for its non-

disclosure. Third, even where a party proves such need, the Department may protect only so much of that information as is necessary to meet the established need. G.L. c. 25, § 5D.

Verizon's appeal challenges the Hearing Officer's findings that Verizon failed to meet the first and second parts of this standard, *i.e.*, whether the material is competitively sensitive and whether Verizon proved in its Motion that there is a need to protect the information from public view.

III. Argument

The Hearing Officer's Ruling should be upheld. The information which is the subject of the Hearing Officer's decision is not "private, commercial information" as defined by past Departmental precedent. Verizon has not met its burden to prove in its Motion that the material should be protected from public scrutiny, that the material is competitively sensitive, or that disclosure of the numbers will affect Verizon's ability to compete in the business market against resellers.

General Laws c. 25, § 5D, states as follows:

> Section 5D. Notwithstanding the provisions of clause Twenty-sixth of section seven of chapter four and section ten of chapter sixty-six, the department may protect from public disclosure, trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter. **There shall be a presumption that the information for which such protection is sought is public information and the burden shall be upon the proponent of such protection to prove the need for such protection.** Where such a need has been found to exist, the department shall protect only so much of the information as is necessary to meet such need. The department shall promulgate procedural rules and regulations consistent with this section as it deems necessary to implement the provisions hereof. [emphasis added]

Verizon seeks to exclude data that consist not of carrier-specific data, but the number of retail

business lines and the number of resold business lines listed on an exchange basis.[1] Verizon did not, however, attempt to exclude the names of the 54 resellers who installed lines in January 2001, or the percentage of resold to retail business lines.[2] The sheer numbers of resold and retail business lines which bracket, or shape, the percentages given by Verizon, are analogous to the numbers of consumer complaints registered against a carrier, and cannot be construed to be competitively sensitive without detailed proof, which Verizon failed to provide in its Motion. See, e.g., *Bell Atlantic's Local Provider Freeze*, DTE 99-105, Hearing Officer Ruling (April 20, 2000).

The Company offers broad conclusory statements that disclosure will "create a competitive disadvantage" and assist Verizon's competitors "in developing competing market strategies," rather

[1]The Department has, in the past, determined that companies who seek to protect third-party carrier-specific data and information about a carrier's internal practices and procedures can overcome the statutory presumption in favor of disclosure and, accordingly, have restricted access to that information to those parties who enter into mutually agreeable nondisclosure agreements. See, *e.g., Bell Atlantic's Tariffs Nos. 14 and 17*, DTE 98-57, Hearing Officer Ruling (November 5, 1999) (Data which state the location of specific carriers' collocation arrangements in each central office and the number of plain old telephone service (POTS) lines each carrier has in each central office should avoid public scrutiny). See also *Bell Atlantic's Local Service Provider Freeze*, DTE 99-105, Hearing Officer Ruling (April 20, 2000) at 3 (Information that contains a carrier's internal operating methods and procedures, or customer service and marketing information should be protected). However, motions that seek to protect information regarding the number of consumer complaints registered against a carrier were rejected by the Department as not constituting "competitively sensitive material." *Bell Atlantic's Local Service Provider Freeze*, DTE 99-105, Hearing Officer Ruling (April 20, 2000) at 6.

[2] The data did not disaggregate the information by reseller name in each exchange; rather the data appear to convey the impression that some or all 54 resellers are offering service in some or all of the exchanges.

than offering specific, concrete examples of how a reseller could use this information against Verizon.[3] For example, Verizon stated in its public version of DTE 2-9 that in the exchange that serves Canton, Massachusetts, the percentage of resold business lines to retail business lines is 21.0%. DTE 2-9 at 1. Hypothetically, this means that there could be 210 resold business lines out of 1000 retail business lines (not the actual numbers). Verizon failed to demonstrate in its Motion why a reseller would think the 210 and 1000 figures would hold some special meaning above and beyond the 21 percent figure which Verizon has provided, or why disclosing the 210 and 1000 figures would give the resellers an advantage over Verizon. Verizon's unsupported statements shed little light on the need for protection

In its Appeal, Verizon sets forth arguments which the Company did not include in its Motion.[4] The Department should disregard those additional arguments because Verizon should have presented its arguments in the original Motion, not on appeal. To allow otherwise will encourage parties to submit incomplete motions that do not pass statutory muster and engender unnecessary appeals. The Hearing

[3] Verizon Motion at 3.

[4] Verizon attempts to supplement its Motion by asserting in its Appeal that: (1) the information is not shared with non-Verizon employees for their personal use; (2) any dissemination to non-employees is labeled proprietary; (3) Verizon employees and agents using this information are subject to non-disclosure agreements; (4) the data are transferred internally over a protected network and marked proprietary; (5) marketing personnel are not given access to the information for the purpose of competing against resellers; (6) the information allows competitors to know which exchanges should receive greater sales and marketing activities; (7) the information allows competitors to target customers; (8) disclosure will allow competitors to determine characteristics of Verizon's markets and can use the information to create their own competitive offerings; (9) other carriers have used the same level of detail in their motions for confidential treatment; (10) the DTE should notify parties of the level of proof required to satisfy its standards; and (11) other companies are not subject to the same level of scrutiny. The Attorney General will not address the merits of these arguments because they were not presented in the Motion.

Officer correctly noted in her Ruling that the burden is on Verizon to show the need for concealing the information, not on the Hearing Officer to show a compelling need for disclosure.[5] Contrary to Verizon's claims, the Hearing Officer did not abuse her discretion because she ruled correctly on the limited arguments and facts presented to her. Consequently, Verizon did not satisfy the first and second prongs of the disclosure rules of G.L. c. 25, § 5D.

IV. Conclusion

For the foregoing reasons, the Attorney General submits that Commission should deny Verizon's appeal of the Hearing Officer's July 19, 2001 Ruling on Verizon's June 13, 2001 Motion for Confidential Treatment regarding Verizon's response to the Department's information request DTE 2-9.

Respectfully Submitted,

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Dated: August 3, 2001

[5] Ruling at 3.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding by e-mail and by either hand delivery, or mail.

Dated at Boston this 3rd day of August 2001.

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